(Testimony of Edward LeRoy Menges.)

A. No, sir.

Q. Did you ever have any conversation with anyone in your lifetime about the filling of the order in this invoice? A. I did not.

Q. Did you give any instructions of any nature to anybody [3586] about this invoice? A. No.

Q. Do you know whether the items set forth in this invoice are true or false? A. I do not.

Q. Do you know anything about this invoice?

A. I do not.

Q. I will now show you U. S. Exhibit 61 in evidence, Mr. Menges, which purports to be a typewritten invoice covering the shipment to the steamship Josiah Royce and I will ask you to examine that.

Mr. Pratt: What is the number?

Mr. Sullivan: 61 in evidence.

Q. Do you know anything about this invoice?

A. I do not.

Q. Did you prepare the invoice? A. No.

Q. Did you have anything to do with the invoice? A. I did not.

Q. Did you have anything to do with the filling of the order called for on this invoice?

A. I did not.

Q. Did you in any way handle the commodities which are set forth in this invoice?

A. I did not.

Q. Did you ever have any conversation, ever in your lifetime, with anyone about the subject matter of this invoice? A. No.

(Testimony of Edward LeRoy Menges.)

Q. Do you know whether the items set forth in this invoice are true or false? A. I do not.

Q. Do you know anything about this invoice at all? A. No.

Q. I will show you Government's Exhibit 98 in evidence, purporting to be a typewritten invoice covering a shipment to the [3587] steamship Cape Charles and I will ask you to examine that. Have you examined it? A. I have.

Q. Did you have anything to do with the preparation of this invoice? A. No.

Q. Did you have anything to do with the filling of the order represented by the invoice?

A. No.

Q. Do you know anything about the order represented by this invoice? A. I do not.

Q. Did you ever have any conversation in your lifetime with anybody about the preparation of this invoice? A. I did not.

Q. Or about the filling of the order which is covered by it? A. No.

Q. Do you know anything about whether the facts in this invoice are true or false?

A. I do not.

Q. Do you know anything about this invoice?

A. I do not.

Q. I will show you now U. S. Exhibit 144 in evidence, purporting to be an invoice dealing with the steamship Gilbert Hitchcock. I will ask you to examine that. Have you examined that?

A. I have.

(Testimony of Edward LeRoy Menges.)

Q. Did you prepare this invoice? A. No.

Q. Did you have anything to do with its preparation? A. No.

Q. Did you ever have any conversation with anybody in your lifetime about the preparation of this invoice? A. I did not.

Q. Did you have anything to do with the filling of the order covered by the invoice? A. No.

Q. Do you know whether the statements set forth in this invoice are true or false?

A. I do not.

Q. Do you know anything about this invoice?

A. No.

Q. I will now show you U. S. Exhibit 53 in evidence, purporting to be an invoice covering certain shipments of commodities to the steamship Henry White and I will ask you to look at that invoice. Have you examined that invoice? A. I have.

Q. Do you know anything about the preparation of this invoice? A. I do not.

Q. Did you prepare it? A. No.

Q. Did you ever have any conversation in your lifetime about this preparation, or the preparation of this invoice? A. I did not.

Q. With anyone? A. I did not.

Q. Did you have anything to do with the filling of the order covered by the invoice?

A. No.

Q. Did you ever give any instructions about the order covered by this invoice? A. I did not.

Q. Do you know anything about whether these

(Testimony of Edward LeRoy Menges.)

statements set forth in the invoice are true or whether they are not true? A. I do not.

Q. Do you know anything about this invoice?

A. No.

Q. I will now show you, Mr. Menges, U. S. Exhibit 151 in evidence, purporting to be a typewritten invoice covering a shipment of some commodities to the steamship Czechoslovakia [3589] Victory and I will ask you to examine that.

A. I have.

Q. Do you know anything about the preparation of this invoice? A. No.

Q. Did you have anything to do with the preparation of this invoice? A. I did not.

Q. Did you have anything to do with the filling of the order covered by the invoice?

A. I did not.

Q. Did you ever have any conversation with or ever give any instructions to anyone about the matters set forth in this invoice?

A. I did not.

Q. Do you know anything about the invoice which I hold in my hand? A. I do not.

Q. I now show you, Mr. Menges, U. S. Exhibit No. 77 in evidence, purporting to be an invoice to the Matson Navigation Company for the steamship Phillipa. I will ask you if you had anything to do with the preparation of that invoice? A. I did not.

Q. I will ask you if you know anything about it? A. No.

(Testimony of Edward LeRoy Menges.)

Q. Did you prepare it? A. No.

Q. Did you have any conversation with anyone about preparing it? A. No.

Q. Did you have anything to do with filling the order which is covered by the invoice?

A. I did not.

Q. Do you know anything about the statements set forth in the invoice with reference to whether they are true or whether they are not true or whether they are inaccurate or accurate? [3590]

A. No.

Q. Do you know anything about them at all?

A. I do not.

Q. I will now show you, Mr. Menges, U. S. Exhibit 161 in evidence, purporting to be a typewritten invoice covering certain shipments to the steamship Edmund Ross. I will ask you to look at that one. Have you examined that invoice?

A. I have.

Q. Did you prepare this invoice? A. No.

Q. Did you have anything to do with the preparation of it? A. No.

Q. Did you have anything to do with filling the order which is called for by the invoice?

A. No.

Q. Did you have any conversation with anyone about filling the order represented by the invoice?

A. I did not.

Q. Did you have any conversation with or give any instructions to anyone about the preparation of this invoice? A. I did not.

(Testimony of Edward LeRoy Menges.)

Q. Do you know anything about whether the statements set forth in this invoice, are accurate or whether they are inaccurate?

A. I do not.

Q. Do you know anything about the invoice at all? A. No.

Q. I will show you now, Mr. Menges, U. S. Exhibit No. 169 in evidence, purporting to be a typewritten invoice to the steamship William C. Coulter. Have you examined that? A. I have.

Q. Did you prepare this invoice? A. No.

Q. Did you have anythign to do with its preparation? A. No.

Q. Did you have anything to do with handling the order which is represented by this invoice?

A. I did not.

Q. Or with filling the order? A. No.

Q. Did you have any conversation with anyone at any time about preparing this invoice?

A. I did not.

Q. Did you have any conversation with anyone at any time about filling the order? A. No.

Q. Do you know whether the statements set forth in the invoice, or have you any idea as to whether they are in accordance with an accurate representation or an inaccurate representation?

A. I do not.

Q. Mr. Menges, I will now show you U. S. Exhibit 102 in evidence, purporting to be a typewritten invoice covering a shipment to the steamship Francis Parker. I will ask you to examine that?

(Testimony of Edward LeRoy Menges.)

A. I have.

Q. Did you prepare that? A. No.

Q. Do you know anything about its preparation? A. No.

Q. Did you give any instructions at any time to anyone about its preparations? A. No.

Q. Did you have any conversation with anyone at any time about its preparation?

A. I did not.

Q. Did you have anything to do with filling the order for merchandise which is set forth in that invoice? A. I did not. [3592]

Q. Do you know whether the statements on here are true or whether they are inaccurate, do you know about them? A. No.

Q. I will now show you, Mr. Menges, U. S. Exhibit 140 in evidence, purporting to be a typewritten invoice of Nye & Nissen concerning a shipment to the steamship Cape Cumberland. I will ask you to look at that. Have you examined that?

A. Yes.

Q. Did you prepare that invoice? A. No.

Q. Do you know anything about it?

A. I do not.

Q. Did you ever talk to anyone about it?

A. No.

Q. Did you ever have a conversation about the filling of the order which is covered by this invoice? A. I did not.

Q. Did you handle the order which is covered by this invoice? A. No.

(Testimony of Edward LeRoy Menges.)

Q. Do you know anything about whether the statements in this invoice are accurate or inaccurate? A. No, sir.

Q. I will now show you U. S. Exhibit 80 in evidence, Mr. Menges, purporting to be a typewritten invoice of Nye & Nissen covering a shipment to the steamship Cape Breton. I will ask you to examine that invoice. Have you examined it?

A. I have.

Q. Do you know anything about that invoice?

A. I do not.

Q. Did you prepare it in any way?

A. No.

Q. Did you ever have a conversation with anyone about preparing it? A. I did not.

Q. Did you handle it in any way, the goods which are covered [3593] by the invoice?

A. No.

Q. Did you ever have a conversation with anyone about filling the order covered by this invoice?

A. I did not.

Q. Do you know anything about the invoice at all? A. No.

Q. I will show you, Mr. Menges, U. S. Exhibit No. 153 in evidence, purporting to be a typewritten invoice covering the shipment of merchandise by Nye & Nissen to the steamship Mission San Diego, and I will ask you to look at that.

Mr. Pratt: What was that number?

Mr. Sullivan: 153.

Mr. Pratt: Well, you had No. 153 before.

(Testimony of Edward LeRoy Menges.)

Mr. Sullivan: It was 53 for the Henry White and 153 for the Mission San Diego.

Q. Did you prepare this invoice?

A. I did not.

Q. Did you have anything to do with its preparation? A. I did not.

Q. Did you ever have any conversation with anyone or give them any instructions about preparing the invoice? A. I did not.

Q. Did you in any way handle the order which is called for by the invoice? A. No.

Q. Do you know anything about the order covered by the invoice? A. I do not.

Q. Did you ever talk to anyone about the order covered by this invoice? A. No.

Q. With reference to the filling of it?

A. No. [3594]

Q. Do you know whether the statements contained in this invoice which I have just shown you are accurate or inaccurate, or anything about them?

A. No, sir, I do not.

Q. I will show you now, Mr. Menges, U. S. Exhibit 164 in evidence, purporting to be a typewritten invoice of Nye & Nissen covering a shipment to the steamship Heber M. Creel. I will ask you to look at that invoice. Did you prepare this invoice? A. I did not.

Q. Do you know anything about its preparation?

A. No, sir.

Q. Did you ever talk to anyone about its preparation? A. No.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever give anyone instructions about the preparation of that invoice?

A. I did not.

Q. Did you ever have any conversation with anyone about filling the order represented by this invoice? A. No.

Q. Did you have anything to do with the order set forth in this invoice? A. No.

Q. Do you know anything about the statements in this invoice as to whether they are right or wrong? A. I do not.

Q. Do you know anything about it?

A. No.

Q. I now show you, Mr. Menges, U. S. Exhibit 147 in evidence, purporting to be a typewritten invoice having to do with a shipment by Nye & Nissen to the steamship James Oliver, and I will ask you to look at it. Did you prepare that invoice?

A. I did not.

Q. Did you have anything to do with its preparation? A. No. [3595]

Q. Did you have anything to do with filling the order for merchandise that is represented by this invoice? A. No.

Q. Did you have any conversation with anyone in your lifetime about filling the order set forth in this invoice or about the preparation of the invoice? A. No.

Q. Do you know anything about whether the statements in the invoice are accurate or inaccurate? A. No.

(Testimony of Edward LeRoy Menges.)

Q. Do you know anything about the invoice?

A. No.

Q. I will show you now, Mr. Menges, U. S. Exhibit No. 86 in evidence, purporting to be an invoice of Nye & Nissen covering a shipment of some eggs for the steamship Hawaiian Shipper. I will ask you to look at that. Have you examined that?

A. Yes. [3596]

Q. Did you prepare that invoice?

A. I did not.

Q. Did you have anything to do with its preparation? A. No.

Q. Did you have anything to do with handling the order which is covered by that invoice?

A. No.

Q. Did you have any conversation with, or give any instructions to anyone about the preparation of this invoice or about filling the order which is covered by it? A. I did not.

Q. I beg your pardon? A. I did not.

Q. Do you know anything about the invoice with reference to whether the facts set forth there are correct or incorrect? A. No.

Q. Now, Mr. Menges, before the charges in this case were brought against you did the FBI come to see you—I will withdraw that question.

Q. Now, Mr. Menges, you recall in court here testimony with reference to certain documents called hand tags of Nye & Nissen which were prepared either in Mr. Berman's writing or Mr. Goddard's writing, having to do with shipments?

(Testimony of Edward LeRoy Menges.)

A. I do.

Q. As a general question, I will ask you if you had anything to do with any of those hand tags that have been mentioned in the testimony here.

A. I did not.

Q. Did you have anything to do with reference to fixing the prices in any of those hand tags?

A. No.

Q. Or selecting the merchandise? A. No.

Q. Or preparing the hand tags? A. No.

Q. Or filling the orders covered by the hand tags? A. No.

Q. Or anything in any way about the hand tags, did you have anything in any way to do with that?

A. I did not.

Q. That would cover all the hand tags that we have had here in court, would it? A. Yes.

Q. Before these criminal charges were brought against you did you see any members of the FBI?

A. Yes, sir.

Q. Whom did you see?

A. Mr. Magee and Mr. Johnson.

Q. Where did you see them?

A. At my home.

Q. When did you see them?

A. It was in the evening, the latter part of July, 1944.

Q. You heard Mr. Johnson stand up in court here, or testify and deny that he had been to your house. Did you hear that testimony?

A. I did.

(Testimony of Edward LeRoy Menges.)

Mr. Sullivan: I wonder—I beg your pardon, I don't want to misquote you. It is my understanding that Mr. Johnson denied——

The Court: Let us proceed with this case.

Mr. Faulkner: Well, I think counsel should not be interrupted by an FBI agent in the course of examining a witness.

The Court: Proceed with this case.

Mr. Sullivan: Q. Do you recognize Agent Dallas Johnson, who sits here in court immediately behind Government counsel, Mr. Houck? Do you recognize him as one of the men who came to your house on that occasion? A. Yes.

Q. Do you recognize Mr. Magee as one of the gentlemen who came [3598] to your house?

A. I do.

Q. When they came to your house did you have any conversation with them? A. Yes, sir.

Q. During the course of the conversation was anything said with respect to your being a defendant in this case, by either Mr. Magee or Mr. Johnson? Just answer that "Yes" or "No."

A. Yes.

Q. Will you tell us in your own words what they said at that time and place?

A. Mr. Magee had been asking me questions, apparently he didn't like my answers, so he said to me——

Mr. Pratt: I will object to those conclusions.

The Court: "He didn't like my answers" may go out.

(Testimony of Edward LeRoy Menges.)

Mr. Sullivan: Q. Just tell us what he said.

A. He said, "Menges," he says, "do you want to be a defendant or a witness in this case?"

Mr. Sullivan: That is all.

Cross-Examination

Mr. Pratt: Q. Mr. Menges, do you know a special agent of the Federal Bureau of Investigation by the name of Jack C. Dickey?

A. I do not.

Q. You have never met such a man?

A. I don't believe I ever did. Well, in fact, I know I never did.

Q. Don't you know as a matter of fact that the two FBI agents who called on you and with whom you had an interview were Mr. Magee and Special Agent Jack Dickey?

A. Well, Mr. Pratt, on [3599] that evening that the two agents came to my house, and after they had been there quite a while the son of mine, one son of mine which is in the service came in and I introduced him to the FBI agents, one as Mr. Johnson and one as Mr. Magee, and neither one of them corrected me.

Q. Do you recall the testimony of Mr. Johnson to the effect that he called out at your house on one occasion and you were not there, and that at the time the interview actually took place he was not there, in fact, he was out of town, I think in Washington or New York? Do you recall him saying that? A. I remember him saying that.

(Testimony of Edward LeRoy Menges.)

Q. Are you very, very sure that Mr. Johnson was the man present when you were interviewed?

A. It was like I explained to you, Mr. Pratt. I introduced him to my son. My son had just come home for a furlough and it was—they had been there an hour, maybe two hours when the son came home. We had talked about him before, and I had even showed them the picture.

Q. Had you seen either of these men prior to that time? A. No.

Q. That was your first acquaintance?

A. The wife had seen them on the occasion when they came to the house.

Q. That was an occasion when you weren't there? A. That is correct.

Q. At all events, you had an interview with two FBI agents, one of whom was Mr. Magee?

A. That is correct.

Q. And you think the other one was Mr. Johnson? A. That is [3600] correct.

Q. Now, referring to all of these shipments, the invoices you looked at just a few minutes ago, do you recognize those as ships of the War Shipping Administration?

A. I don't know. I couldn't recognize them as such.

Q. You knew, didn't you, that Nye & Nissen were supplying eggs and other products to War Shipping Administration vessels during the months of April and May of 1944, didn't you?

A. I would say yes.

(Testimony of Edward LeRoy Menges.)

Q. You knew, did you not, that the ships I have mentioned, or that were mentioned to you by Mr. Sullivan, were ships of the War Shipping Administration? A. Not until I came to this court.

Q. Well, you knew that all ships that were operating out of San Francisco Harbor except coastwise boats, perhaps, were operated by War Shipping Administration?

Mr. Faulkner: How could a man know that when it is not true?

Mr. Pratt: Well, I am asking him.

Mr. Faulkner: I object to that question on the ground it is absolutely untrue, and we object to it as incompetent, irrelevant, and immaterial, and assuming something historically not true, and not in any way——

The Court: Read the question.

(Question read by the reporter.)

Mr. Pratt: I will withdraw it to save time.

Q. At the time that is involved in these particular invoices that you looked at you were in charge at Nye & Nissen's plant of the egg candlers, were you not? A. I was.

Q. And you were in charge of all the candlers of eggs that were candling here in the plant at San Francisco, were you not?

A. We was not doing much candling.

Q. You were in charge of all the candling of eggs that was done in that plant at that time?

A. I was.

Q. When you were also in charge of the butter

(Testimony of Edward LeRoy Menges.)

room you had charge of whatever activties were going on at that period, whatever activities in the butter line during the period of April and May, 1944, weren't you? A. Yes.

Q. So that whatever eggs went out to any of the customers during any of those months, whatever eggs went out that were candled in San Francisco, they were candled under your supervision, is that right? A. You are right, Mr. Pratt.

Q. Now, as far as shipments of eggs to any of the customers of Nye & Nissen during the period of April and May, 1944, those transactions were handled by the City Sales Divison, or by the City Sales organization of Nye & Nissen?

Mr. Faulkner: We object to that as assuming something not in evidence. The great bulk of the orders were handled by Nye & Nissen, Inc. and not City Sales.

The Court: Read the question.

Mr. Pratt: I will withdraw it, to save time.

Mr. Faulkner: Q. State the records right and you won't get an objection.

Mr. Pratt: Q. In connection with the candling of eggs in your plant you were well acquainted, I suppose, with the girls who were employed by you there, were you not? Most of them had been there quite a long time, had they not?

A. Yes.

Q. I think you mentioned Josephine Briant, who testified here as a girl who worked there for you for a long time?

(Testimony of Edward LeRoy Menges.)

A. Not for a long time. She just worked for a short time.

Q. How long a period was that?

A. I wouldn't say.

Q. By a short period you mean just a few months, or just a few years?

A. I would say months.

Q. Do you remember a young woman by the name of Eleanor McKenna, who worked for you there? A. I do.

Q. As a candler? A. As a candler.

Q. How long did she work there, do you know?

A. She left the employ of Nye & Nissen in 1945, I would say.

Q. In 1945. Did you have a young woman working for you as a candler by the name of Violet McGuinn? A. I did.

Q. Do you remember her? A. Yes.

Q. Do you know how long a period she worked there under you direction?

A. I would say she left in 1944 or '45; I wouldn't say.

Q. She worked for a good many years, didn't she? A. She did.

Q. Do you remember another young woman by the name of Juanita Mathewson? A. I do.

Q. She worked for you for quite a long time, didn't she? A. Yes.

Q. As a candler? A. Yes.

Q. Do you remember another young woman by the name of Marie Valdez? A. I do.

(Testimony of Edward LeRoy Menges.)

Q. And she worked for you as a candler?

A. Yes.

Q. For quite a long time did she not?

A. For a couple of years.

Q. During the period of time for the few months previous to your moving into the Missouri and Seventeenth Street plant, isn't it a fact that eggs were switched or transferred from stamped cases, cases stamped with Government stamps, switched from those into other cases, and then eggs of another quality put into the cases from which eggs had been removed or transferred?

Mr. Faulkner: To which we object—— Are you through?

Mr. Pratt: No.

Mr. Sullivan: Pardon me.

Mr. Pratt: Didn't that occur during the months, several months previous to moving into the Missouri Street plant?

Mr. Sullivan: To which we object upon the ground it is improper cross-examination. The direct examination has been limited to the very charges that the Government brought or tried to bring against this man on its case in chief.

The Court: Overruled.

Mr. Sullivan: Exception.

The Witness: May I have the question read?

The Court: Read the question. [3604]

(Question read by the reporter.)

Mr. Sullivan: If the Court please, may I further add to the objection——

(Testimony of Edward LeRoy Mengis.)

Mr. Faulkner: Please.

Mr. Sullivan: All right, I withdraw it.

The Witness: A. We have transferred eggs from stamped cases, yes, Mr. Pratt; that would be all.

Mr. Pratt: Q. From Government stamped cases?

A. Either from Army or Department of Agriculture.

Q. And then did you not also transfer into the cases from which the eggs had been removed other eggs without removing the stamps?

A. No. The stamp was always defaced.

Q. During this period didn't you give instructions to Eleanor McKenna to remove eggs from Government stamped cases and put in their place inferior eggs or other eggs without removing the stamp? A. I did not.

Q. During the early months after you moved from the Townsend Street plant to the Missouri Street plant, did you not give instructions on several occasions to Eleanor McKenna to switch eggs or transfer eggs out of Government stamped cases and to put in their place eggs of another quality which had not been inspected and without removing the Government stamp?

Mr Faulkner: We object to that, if the Court please, as incompetent, irrelevant, and immaterial, and not proper cross-examination. In connection with that objection I would [3605] like to call the Court's attention to the state of this record. The

(Testimony of Edward LeRoy Menges.)

case is divided into transactions that ended at the time Mr. Pineda left the employ of Nye & Nissen in 1942. Then the case is resumed starting in 1944, and the Government has introduced no evidence of any transaction in that intervening period. Your Honor has in mind that the matter of time has entered into this case. Mr. Sullivan precisely in the interest of time confined this witness to the testimony that was introduced—as to the instances testified to by Mr. Pineda or Mr. Andrade we have no objection to, but when they take this hiatus which is in their case and then want to go into generalities we submit it is not proper cross-examination, and merely reopening the entire field. That is something which we purposely attempted to avoid in the interest of time.

The Court: Objection overruled. Let the reporter read the question.

Mr. Faulkner: Exception.

(The question was read by the reporter.)

The Witness: I did not.

Mr. Pratt: Q. Did you not during the few months previous to moving into the new plant instruct Violet McGuinn to transfer eggs out of stamped cases, Government stamped cases and to put in their place eggs that had not been inspected, eggs of another quality, without removing the Government stamps and without this being in the presence of any inspector? [3606]

Mr. Faulkner: The same objection; also the ob-

(Testimony of Edward LeRoy Menges.)

jection that the time and place and parties present have not been fixed.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: A. I did not.

Mr. Pratt: Q. Did you not during the months, the few months after moving into the new plant on Missouri Street, give instructions to Violet McGuinn to transfer eggs out of Government stamped cases and put in their place other eggs without removing the Government stamps, and without the presence of any Government inspector?

A. No, sir.

The Court: The jurors may take a recess for a few minutes.

(Recess.) [3607]

The Court: Proceed.

Mr. Pratt: Q. Mr. Menges, when did you move to this new plant, do you know?

A. In October of 1942.

Q. Do you have an exact date when you moved?

A. No, sir.

Q. Was it all done on one day or did it take some time to move from one to the other?

A. A period of time.

Q. That is, there were activities in both, the old plant and the new one at the same time?

A. No, I wouldn't say that there were.

Q. During the period within a very few months previous to moving to this new plant I will ask whether you did not instruct Juanita Mathewson

(Testimony of Edward LeRoy Menges.)

to transfer eggs out of Government stamped cases and put in their place eggs that had not been inspected, eggs of a different character, without removing the stamps from the cases?

Mr. Faulkner: May I be further heard on the subject of this type of cross-examination? My understanding is, your Honor, it is a fundamental rule of law where a defendant is accused of an offense and witnesse have been called to testify to specific instances in which he participated, which it is claimed by the Government are capable of being criminal in kind or character, it is the burden of the Government to produce all of that testimony in their case in chief, and when the defendant comes and testifies to the thing that he has either been accused of in the charge or testified by the witness, his [3608] cross-examination is limited within the sphere covered by his direct examination, and that the Government is not permitted to gain an advantage of having a last word in the case by laying apparently impeachment foundation questions. I think that is a fundamental rule in criminal law and criminal evidence. In other words, they had ample opportunity, if they had any objection to any conduct of Mr. Menges, to produce witnesses to that effect. Now, instead of doing that they want to ask a series of questions, and then at a future time, when our case is closed, to start retrying their case in order that they may have the last word. That is condemned in the textbooks and it is condemned by the authorities. We sub-

(Testimony of Edward LeRoy Menges.)

mit, your Honor, that the witness' cross-examination should be limited to his direct examination, and I use that as a supplementary objection to that that I have already voiced to your Honor.

The Court: Is the matter submitted?

Mr. Faulkner: Yes.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Will you read the question?

(Question read.)

A. I did not.

Mr. Pratt: Q. During the period of a few months after moving to this new plant on Missouri Street, did you not instruct Juanita Mathewson to transfer eggs in the same manner as I have already described in the old plant? [3609]

Mr. Faulkner: Same objection, your Honor.

The Witness: I did not.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

The Court: Q. What is the answer?

A. I did not.

Mr. Pratt: Q. During the few months previous to moving from the old plant did you not instruct Marie Valdez, one of your candlers, to transfer eggs out of Government-stamped cases and put in their place eggs that had not been inspected, eggs of a different quality, without removing the Government stamp from the case? A. I did not.

Q. And during the period of time immediately following, a short period immediately following mov-

(Testimony of Edward LeRoy Menges.)

ing to the new plant, did you not instruct Marie Valdez to transfer eggs from Government-stamped cases in the manner that I have described?

A. I did not.

Mr. Faulkner: The same objection.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Referring to each of the candlers whom I have mentioned, namely, Eleanor McKenna, Violet McGuinn, Juanita Mathewson, and Marie Valdez—did you not on the occasions I have mentioned assist in the transferring of eggs from Government-stamped cases in the manner that I have described?

Mr. Faulkner: Same objection.

The Court: The objection is overruled. You may answer. [3610]

Mr. Faulkner: Exception.

A. No, sir.

Mr. Pratt: That concludes my cross examination, if the Court please.

Mr. Sullivan: That is all.

The Court: Step down. Call your next witness.

Mr. Faulkner: Mr. Goddard.

RUBY J. GODDARD,

called as a witness for Defendants; sworn.

The Clerk: Q. Will you state your name?

A. Ruby J. Goddard.

Direct Examination

Mr. Faulkner: Q. What is your full name, Mr. Goddard? A. Ruby Jutland Goddard.

Q. How old are you?

A. 44 next birthday.

Q. Where do you live?

A. 1638 Thirty-fifth Avenue.

Q. Are you married?

A. Yes, sir, I have two boys.

Q. Were you employed by the firm of Nye & Nissen in the years 1938 up to the present time?

A. Yes, sir.

Q. In what capacity, Mr. Goddard?

A. Shipping clerk and receiving clerk.

Q. Did you have any other position in that firm, Mr. Goddard?

A. No, sir. But, Mr. Faulkner, in the year, I think, 1940, I actually worked for Nye & Nissen, but I also represented the [3611] Douglas Guardian Warehouse Corporation, which is a national warehouse corporation, as field representative at the plant of Nye & Nissen.

Q. Will you briefly, to indicate that with a little more clarity, state what your relationship was with the firm of Nye & Nissen and the Douglas Guardian Company?

(Testimony of Ruby J. Goddard.)

A. Well, I worked for Nye & Nissen, but also checked and kept records for Douglas Guardian of any merchandise that was stored in their boxes.

Q. Did you receive compensation from them?

A. I received my salary from Douglas Guardian, who were in turn reimbursed for my services by Nye & Nissen.

Q. In other words, on this phase of your employment, Mr. Goddard, you had been employed by the firm of Nye & Nissen and then you became a representative of the Douglas Guardian Warehouse Company, is that right? A. Yes, sir.

Q. And without going into greater detail, that was an arrangement whereby warehouse receipts were issued, is that briefly right?

A. That is right.

Q. They paid you a salary and you had a trust and a responsibility to them, but in actuality Nye & Nissen was your employer so far as your work was concerned? A. That is correct.

Q. Except that you did have a position of trust with relation to this other company?

A. Yes, sir.

Q. Which you discharged to the extent of your ability, is that correct? A. Yes, sir. [3612]

Q. Mr. Goddard, in the years 1938, 1939, 1940, 1941 and 1942, what was your salary from either source?

A. I think my salary in 1938 and 1939 was about $50 a week.

Q. And how much was it in 1942?

(Testimony of Ruby J. Goddard.)

A. I think in 1942 I was getting paid by the month. I think it was around $300 a month. I am not certain.

Q. What was your salary in the year 1944?

A. 1944, I think my salary was around $350 a month.

Q. In the years 1938 until sometime in 1942, the establishment of the firm of Nye & Nissen was at 324 Townsend Street, is that correct?

A. That is right.

Q. And then you moved to Seventeenth and Missouri Streets? A. Yes, sir.

Q. I will direct your attention, Mr. Goddard, in a series of questions, to Townsend Street. During that period of time there was a man in the employ of Nye & Nissen named Pineda, is that correct?

A. That is right.

Q. And during a period of that period of time there was a man in the employ of Nye & Nissen named Andrade, is that right?

A. That is correct.

Q. In connection with the man Pineda, what was his business or occupation in the years 1939, 1940, 1941 and up to the time that he left, if you remember it?

A. In 1939 Henry Pineda spent most of his time in the breaking room, helped out in the butter room, and occasionally helped out on the floor. [3613]

Q. In connection with the breaking room, did you have charge of the breaking room?

A. Well, I would tell him which eggs to break.

(Testimony of Ruby J. Goddard.)

Q. I will get at it this way: During those ten years generally what was the work that you performed for the firm of Nye & Nissen?

A. I would receive all the merchandise, make the shipments, and instruct the boys as to their duties.

Q. During the period that I have mentioned, 1938 to 1942, when you were down on Townsend Street, about how many men would there be in the employ of Nye & Nissen, men and women, do you know?

A. Well, there would usually be about five egg candlers as an average, five or six, and then we had Tom Andrade as a truck driver, Ed Menges as the egg room foreman; Henry Pineda would work in the breaking room, working on the floor, and I think Jimmy Nix was there until 1942.

Q. Did you have other drivers than Andrade—how do you pronounce his name?

A. Andrade or Andrade, I don't know which.

Q. Did you have other drivers besides that fellow?

A. Not with Nye & Nissen. Nye & Nissen City Sales had some other drivers, but they worked under Mr. Berman, not under me.

Q. How many drivers did they have?

A. I think Mr. Berman had two drivers, two or three. I don't remember.

Q. During that period of time, Mr. Goddard, can you give us a picture with as much accuracy as your can of the quantities of merchandise moving

(Testimony of Ruby J. Goddard.)

in and out of the 324 Townsend Street Address in the three or four years before 1942 when you left?

A. Well, we would handle thousands of cases of eggs a week.

Q. In connection with the handling of those cases, Mr. Goddard, it was true, was it not, that when you handled thousands of cases a week it meant that there was a phase of your work devoted to bringing the cases in and a phase of your work devoted with what you did with the cases when they were in there, and a phase of your work devoted to getting the cases out of there on sales and deliveries, am I correct in that?

A. That is right.

Q. Also, during that period of time you were handling butter, were you not?

A. Oh, yes, we were handling great quantities of butter.

Q. You had a butter room there?

A. We had a butter room, yes.

Q. And you had, without taking the time to get these various plans and drawings, coolers and facilities for cutting your butter and facilities, in a minor way, for the storage of eggs, is that correct?

A. That is correct.

Q. In comparison between the Townsend Street address and your present location, the Townsend Street address was not equipped for the handling in storage of the considerable quantities of eggs that you are capable of handling at the Nye &

(Testimony of Ruby J. Goddard.)

Nissen plant at Seventeenth and Missouri, am I correct in that? A. That is correct.

Q. But you did, however, have facilities for the handling and the storage of eggs there at proper temperatures, is that correct?

A. That is right. [3615]

Q. During that period of time were there other commodities? Did you handle cheese in those years? A. We handled some cheese, yes.

Q. Was that then always a relatively small part of your business? A. Oh, yes.

Q. Do you know with any degree of accuracy the quantities in thousands or million pounds of butter that you would handle in a year? If you do not know we will supply it otherwise.

A. Well, I don't know offhand, but I know it is tremendous quantities.

Q. Do you know in thousands or hundreds of thousands of cases the number of cases of eggs that Nye & Nissen was handling in those years of 1939, 1940, 1941 and 1942?

A. I would say we were handling hundreds of thousands.

Q. You do not know the exact figures, is that right? A. No, I do not.

Q. In the years 1939, 1940 and 1941 where did the great majority—I do not want you to go into detail; I want to get a broad picture in as few questions as I can, Mr. Goddard—where did the great quantities of eggs come from that went into

(Testimony of Ruby J. Goddard.)

the plant of Nye & Nissen on Townsend Street in the years before you moved out to Missouri Street?

A. From our own packing plants, which were in Petaluma, Santa Cruz and Utah.

Q. In connection with the handling of eggs that came into your plant in those years, do you know whether those eggs had been [3616] graded for quality before they came into 324 Townsend Street?

A. All the eggs we received from our packing plant were graded for quality.

Q. In the course of the operation of the Townsend Street period of the existence of Nye & Nissen there were occasions, however, when candling operations occurred in that plant, am I correct in that? A. Yes, sir.

Q. Now, take, for instance, in the years 1939, 1940 and 1941; what, generally, were the eggs that would be required to be candled in the Townsend Street address as distinguished from the eggs that have come in from your plants already candled and graded?

A. The majority of the eggs that were candled in our Townsend Street plant at that period were eggs for the city trade.

Q. When you say the city trade, was the firm of Nye & Nissen engaged in a so-called city trade?

A. City Sales handled that division and they were selling merchandise to the city trade.

Q. Mr. Goddard, in other words, is this correct: In the period that I have mentioned City Sales had several truck drivers and you had one, is that it?

(Testimony of Ruby J. Goddard.)

A. That is right.

Q. Eggs were prepared for the City Sales phase of the business, is that correct?

A. That is correct.

Q. In number of sales, as distinguished from quantity, do you know what the relationship, what the portion would be of the quantity of eggs which went out for sale right from 324 Townsend [3617] Street, went to the City Sales Division, as distinguished from the quantities that were handled by the corporation and sold from those premises?

A. Oh, a very small proportion.

Q. Which was the small proportion?

A. City Sales.

Q. Was the smaller?

A. The smaller proportion.

Q. In that operation there was a period of time when there was a company called the Coast Egg Products Company. Do you know that name?

A. Yes, sir.

Q. It conducted a similar phase of business as that conducted by Nye & Nissen City Sales at a later time. Now, that was an operation which Mr. Berman was the manager of? A. Yes, sir.

Q. To whom did you sell eggs or deliver eggs and prepare eggs for delivery?

A. We sold eggs to steamship companies, to Government agencies, to dealers.

Q. In connection with the City Sales phase of the operation were inspections of Government agencies required, or do you know?

(Testimony of Ruby J. Goddard.)

A. For City Sales?

Q. For City Sales. A. No, sir.

Q. In connection with the sales to shipping companies, what companies were customers of Nye & Nissen during the period of time that Mr. Pineda was indicating certain activities in the firm of Nye & Nissen, say in the years 1939, 1940 and 1941, and so on.

A. The Matson Navigation, American President Lines, United Fruit, Panama-Pacific and there may be a few small other ones. I just don't remember.

Q. In other words, Mr. Goddard, is it not true that the shipping business in the years 1939, 1940 and 1941 in respect to the movement of ships and supplying them in those years was not comparable to the situation which existed after the war commenced? A. There was no comparison.

Q. However, you did a substantial business with certain shipping companies, is that correct?

A. That is correct.

Q. During those years did you do, that is, the phase of the business that was under your direction, a substantial business with the United States Army? A. We did some business, yes, sir.

Q. Did you in relation to that business have Army inspectors come in and inspect butter and eggs and perhaps cheese? A. Yes, sir.

Q. And among the men who came in——

Mr. Hippely: The colonel has gone.

Mr. Faulkner: He must have had an engagement. The colonel has been an onlooker here.

(Testimony of Ruby J. Goddard.)

The Witness: I have seen Colonel Hand at the plant, yes, sir.

Mr. Faulkner: Q. And other men?

A. Yes, sir.

Q. Do you remember, Mr. Goddard, during the period of 1939, 1940, 1941 and 1942 whether a man named Colonel Foster was an active inspector in the premises of Nye & Nissen?

A. Colonel Foster was never an active inspector in our premises.

Q. You knew Colonel Foster?

A. I have met him twice. [3619]

Q. Did you meet him at the firm of Nye & Nissen?

A. I think I met him at our plant twice.

Q. In what year was it, do you remember?

A. I do not remember the year, but I remember the first time I met him.

Q. When was that?

A. Oh, it may have been 1939 or 1940. I just don't remember the year.

Q. When was the next time you met him?

A. I think he came down about a year after that.

Q. So that in the period of time between 1939 and 1942, when Mr. Pineda left, of all of the Army inspectors that came into your premises, this man, Colonel Foster, was only in there twice, is that right? A. That is correct.

Q. To your memory? A. That is right.

Q. On the occasions that he was not in there, the

(Testimony of Ruby J. Goddard.)

years in between, was the name Colonel Foster constantly the subject of conversation in the premises of Nye & Nissen?

A. We have heard his name mentioned on many an occasion.

Q. By Mr. Pineda?

A. I never heard Mr. Pineda mention his name.

Q. In the years 1939 to 1942 was there a Colonel Kielsmeier who came into the premises of Nye & Nissen?

A. I saw Colonel Kielsmeier in the year of 1940 and 1941. I do not believe he was there in 1942, but I just won't swear to it.

Q. Was he there in 1939?

A. He may have been.

Q. But you do not remember him in 1942?

A. I really do not. [3620]

Q. Did he come in there often?

A. He came in there very often.

Q. And did he come in in connection with his duties as an Army inspector to inspect eggs and butter? A. Yes, sir.

Q. Do you recall Colonel Hand coming into the premises of Nye & Nissen? A. I sure do.

Q. Do you recall what his rank was in those days? A. A lieutenant.

Q. Prior to your moving to Seventh and Missouri Streets, did he have occasion to come into your premises frequently? A. Yes, sir.

Q. When these men, whether it was Colonel

(Testimony of Ruby J. Goddard.)

Kielsmeier or Colonel Hand, came into your premises, would they come singly, alone, or in groups?

A. They usually came in groups.

Q. Did they ever come singly for purposes of an inspection? A. I don't think so.

Q. Did they ever come in doubles?

A. Oh, yes.

Q. Triples? A. Yes, sir.

Q. What is the greatest number of Army men that ever came into your premises at one time during that period for the sole purpose of making an examination of eggs?

A. I have seen as high as six or seven.

Q. How many? A. Six and seven.

Q. Six and seven? A. That is right.

Q. Come into Townsend Street during that period for the purpose of an Army inspection?

A. That is right. [3621]

Q. During this period of time were the Army inspectors constant visitors at your premises?

A. Yes, sir.

Q. During the same period of time were there other United States Government officials who were constantly and continuously in your plant inspecting merchandise? A. Yes, sir.

Q. Who were they?

A. Inspectors from the Department of Agriculture.

Q. During the period from 1939 up to 1941 and 1942, would it be a usual or an unusual thing for a day to pass that during the greater portion of the

(Testimony of Ruby J. Goddard.)

day there would be United States Government representatives in your plant inspecting merchandise?

A. I did not get the question.

Mr. Faulkner: Will you read it, Mr. Reporter?

(Question read.)

Mr. Faulkner: I will withdraw the question in that form.

Q. Mr. Goddard, during the years 1939, 1940, 1941 and 1942, were Army and/or Department of Agriculture inspectors in your premises almost daily? A. Yes, sir.

Q. Directing your attention to some of the specific incidents that have been mentioned—to specify this incident, Mr. Goddard, I will have to refer to the testimony of Mr. Pineda—you heard him testify? A. Yes, sir.

Q. He testified to an incident which he first fixed in the summer of 1942 and then changed to the summer of 1941, and he said that you and Mr. Menges and Mr. Moncharsh went into a conference [3622] in a corner, and that Mr. Pineda evidently heard a conversation. The conversation Mr. Pineda heard when you were in the corner is supposed to have been, "The only thing that is supposed to be *taken of* the quantity of eggs were Black Rots and the Leakers." And then Mr. Moncharsh added, "The grade will be Grade A to meet the Army regulations."

Now, do you remember any conversation of similar import or words of like effect?

A. No, I do not, Mr. Faulkner.

(Testimony of Ruby J. Goddard.)

Q. In the event that you were preparing an order of eggs of the quality of Grade A, would you prepare a quality of egg like that, or did you prepare it by any candling process in your plant which merely embraced the removal of Black Rots and Leakers? A. No, sir.

Q. Whether Mr. Pineda's time is right or wrong, and regardless whether it is 1942, as he said one moment, or a year before, as he said the next, regardless of the time, Mr. Goddard, when you were selling eggs to the Army, where was the inspection made that determined whether or not the Army would accept the eggs?

A. At the point of delivery.

Q. Was that uniform? A. Absolutely.

Q. In the month of June of 1941 do you know whether there was being sold to the United States Army substantial quantities of A eggs?

A. I do not think so.

Q. Do you know whether in the month of June, 1941, you were selling to the United States Army a substantial quantity of [3623] Standard eggs?

A. I think we did.

Q. In the month of June, 1941, sales to the United States Army coming from the plant on Townsend Street were primarily sales in which you would make the invoices, isn't that correct?

A. That is correct.

Mr. Faulkner: I think I will go back to that subject tomorrow morning, so I won't be going to my records to get them now.

(Testimony of Ruby J. Goddard.)

Q. When you desired eggs, either for the Army in June, at the time you are supposed to have had a conversation with Mr. Moncharsh—when you desired a quantity of eggs to be assembled, which meant a particular grade, and it required candling in your premises, what direction would you give and to whom would you give it?

A. I would always give the directions to Mr. Menges.

Q. What would you say to him if you wanted a particular quality of egg?

A. If I wanted a Grade AA egg or, at that time, U. S. Extra, I said—I told him, Eddie at that time—I would say, "Eddie, I want 200 cases of Extras," or "100 cases of Extras," and I would designate to him a lot of eggs to candle for that order.

Q. Where would the eggs be that would be turned over to Mr. Menges?

A. On the warehouse floor on Townsend Street.

Q. Would that be the extent of your direction?

A. That is right. [3624]

Q. Would you tell Mr. Menges how to fix his Grade AA eggs, or Standards, or Trades, or Extras? A. No, sir.

Q. In other words, Mr. Goddard, there would be a quantity of eggs on your warehouse floor or in your premises, and you would turn over those eggs to Mr. Menges and say, "I want them graded Extras," or whatever it would be, is that right?

A. That is correct.

Q. In connection with that operation, how many

(Testimony of Ruby J. Goddard.)

qualities of eggs would come out of that candling operation in the normal course of business?

A. Well, if they were candling for a Grade A or an Extra, he would have a Grade A, he would have a Grade B, which is a Standard and a Trade.

Q. When eggs would come into your plant from these packing plants that were owned by Nye & Nissen onto the floor of your premises, will you describe to the jury how you would keep track of the quality and the size of those eggs so that you would know the next day what they were?

A. When a truckload of eggs would come into our premises they would unload these eggs on flats, usually 30 cases of eggs to a flat. We would line these eggs upon the floor in rows. We would keep the large AA's in one row, two rows, depending on how many cases there were, and we would do the same thing for the A Mediums, the AA's, and so on. We would keep a straight line of one kind of eggs.

Q. With respect to the cases that made up that straight line of a particular grade of eggs, would the cases all be uniform in [3625] appearance?

A. Not always.

Q. Now, the sources would be the packing plants of the company, is that correct? A. Yes, sir.

Q. And there were at least three?

A. At least three.

Q. And they would come in on these lines that you would line upon your warehouse floor or upon the premises; would you mark the lines?

(Testimony of Ruby J. Goddard.)

A. We would mark with a chalk mark the front end of a tray—just put "Large AA" or the word "Large Specials" or put the word "Medium AA" right on the front end, so walking up the floor you can always tell just what you have there.

Q. In other words, Mr. Goddard, assume that the jury box would be a line of a particular quality of eggs facing out on an aisle near the door. Where would the marks be of the type of eggs in that particular lot of eggs?

A. Right up on the front end of it.

Q. And as you added to the line you would always have the marks there?

A. Right up on front.

Q. That line then would fix a quality of merchandise, is that correct? A. That is correct.

Q. And you would have many lines on your floor, is that correct? A. That is right.

Q. Now, in the candling operations that were conducted by the firm on Townsend Street, when eggs came out of there that were grade A eggs, what would happen to those eggs? Where would they go?

A. They would go into a separate line.

Q. The same line, some line that had theretofore been designated for that quality of eggs, is that right? A. That is correct.

Q. So that when the candling operation in the firm of Nye & Nissen on Townsend Street was completed, you would have in a line of Grade A eggs, or any quality of eggs, for that matter, eggs that

(Testimony of Ruby J. Goddard.)

had been candled in the firm on Townsend Street, eggs that had been candled and graded in Petaluma, eggs that had been candled and graded in Santa Cruz, and eggs that had been candled and grade in Utah, isn't that correct?

A. That is correct, yes, sir.

Q. Now, in respect to that, in the candling operation did you ever at any time either say to Mr. Menges or hear Mr. Moncharsh say to Mr. Menges that in order to get a Grade A egg that certain other eggs should be graded and merely Rots and Leakers taken out? A. No, sir.

Q. In the event that you had a quantity of eggs on your floor and you knew the past history of the eggs and you desired to prepare a quantity of eggs of standard grade or one of the lower grades, would you then give a direction that certain Rots or Leakers be taken out of cases of eggs and the balance treated as a particular quality?

A. Yes, sir.

Q. When would that be, Mr. Goddard?

A. If I had an order for some standards, and I had some eggs on the floor that had [3627] been on the floor for several days, I would tell Mr. Menges when he took those eggs back that I wanted the standards, but for him just to tell the girls to candle those eggs and take out Leakers and Rots, because I knew the eggs would be standards or better in quality.

Q. What advantage would be gained by you in

(Testimony of Ruby J. Goddard.)

not having every egg candled for quality, in that case and merely candling for two particular things?

A. Well, they would candle those eggs much faster that way, and at most times we never had enough standards to fill an order with and we would usually have to give them some Grade A's to finish the order.

Q. You heard some testimony here from an expert from the OPA, but back in the years 1939, 1940, 1941 and 1942, do you know, Mr. Goddard, the difference in prices between these various qualities of eggs that we have heard so much about?

A. No, I do not. I do not believe we had an OPA in 1939.

Q. No, I know we did not, but did you know the difference in prices between a AA Large and an A Large?

A. Mr. Faulkner, in selling those eggs to the Government by standards in those times, all those orders—they bid on these orders, and no matter what the price would be, if you received an order you would have to fill that order.

Q. In other words, if you filled an order for standard eggs you would fill that order no matter what additional quality of egg you would give, is that right? A. That is right. [3628]

Q. During what period of the year, Mr. Goddard, would it be difficult to find a substantial quantity of standard eggs in your premises?

A. I would say during the spring.

(Testimony of Ruby J. Goddard.)

Q. Well, spring is an elusive term. In other words, what month?

A. Take February, March, April, May, June, July.

Q. During that period of time where do the eggs come from?

A. From our packing plants.

Q. Well, do they come from ice and cold-storage companies? A. No, sir.

Q. Have you any recollection of any incident at any time where in the spring months from latter January, we will say, up until June, where the firm of Nye & Nissen on Townsend Street were withdrawing eggs in storage to deliver to anybody?

A. No, sir, I do not remember.

Q. Do you know why they put the eggs in storage? A. Yes, sir.

Q. Why? A. Well——

Q. Withdraw that. What period of the year do they store eggs?

A. Oh, the latter part of February, March, April, May and sometimes in June.

Q. During the period of time that a company is storing eggs in an ice house or a storage plant, aren't they at the same time taking out storage eggs? A. No, sir.

Q. Why do they put the eggs in storage?

A. Well, at that time of the year there is a great abundance of eggs and the [3629] market is pretty cheap. On the other hand, in the fall the eggs are scarce and the egg market is much higher usually.

The Court: It is time for adjournment. The jurors may be excused until tomorrow morning at ten o'clock.

(Thereupon an adjournment was taken until tomorrow, Thursday, March 28, 1946, at 10:00 o'clock a.m.) [3629-a]

Thursday, March 28, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Waive the roll call, stipulated the jurors are present. You may proceed.

RUBY J. GODDARD,

recalled.

Direct Examination (Resumed)

Mr. Faulkner: Q. Mr. Goddard, on yesterday I was asking you some questions about storage eggs and why eggs were put in storage in the period of the year in which storage eggs are withdrawn and I think that my questions involved an incident in June of 1941. In the month of February of 1941, Mr. Goddard, is that a period when eggs are being withdrawn from storage or are they being placed in storage?

A. We usually start placing eggs in storage during the month of February.

Q. Do you know whether in the month of February, 1941, any eggs were withdrawn from storage and brought to the plant of Nye & Nissen?

A. No, sir.

(Testimony of Ruby J. Goddard.)

Q. On Townsend Street. Do you recall the testimony of Mr. Pineda? He testified that there were some inspections where Colonel Hand was present. The Colonel is here this morning. He testified that eggs were taken out of a freezer and placed [3630] all over the floor of Nye & Nissen's plant on Townsend Street and then Colonel Hand took his sample cases and put them into the candling booth and while he was in candling the eggs all of these cases that were spread out on the floor were removed, taken into a freezer and then you substituted a lot of eggs equivalent in number and placed them back on the floor in the same position as they were when Colonel Hand took one sample here and one sample there and one sample there. Did you ever see any exchange like that happen?

A. No, sir, Mr. Faulkner.

Q. In the year 1941 in relation to the sales of eggs, whether they were standards, extras, or specials, when Colonel Hand was in the premises of Nye & Nissen inspecting eggs, where was the inspection held which determined whether the Army would accept the eggs?

A. At the point of delivery.

Q. That was true during that entire period of 1941, is that your testimony? A. Yes, sir.

Q. And up to the time of the creation of the quartermaster——

A. Quartermaster Market Center.

Q. Do you recall when that came into being?

(Testimony of Ruby J. Goddard.)

A. I think that came into effect around 1941, 1942; I am not sure.

Q. Do you recall where it came into effect, I mean whether it came into effect before or after the war? A. Before.

Q. At all events, it was not in effect in February, 1941, or June, 1941? A. That is right. [3631]

Q. Now, in relation to inspection of eggs by Colonel Hand, there may have been other incidents testified to, but I won't attempt to point out directly the particular testimony, but in relation to any inspection by the United States Army, Colonel Hand or any other officer, did you ever at any time either direct or personally participate in or see another person in the employ of Nye & Nissen substitute any lot of eggs that had been tendered to the Army inspectors during that period of time when the Army inspector was engaged in candling the eggs? A. No, absolutely not.

Q. During the period of time from 1939, 1940, 1941 and 1942, was the firm of Nye & Nissen in their plant on Townsend Street selling substantial quantities of eggs to the United States Army?

A. They were selling quite a few.

Q. Were all of the inspections made by the department that Colonel Hand had some connection with? A. No, sir.

Q. What was the other department?

A. There was a Veterinary Corps for Fort Mason.

Q. As between the two corps, that is the same

(Testimony of Ruby J. Goddard.)

corps but working under a different group of men, who received the greater portion of the eggs?

A. Well, the Veterinary Corps from Fort Mason inspected a greater portion of the eggs. They were to get pretty near all the shipments of eggs, the greater proportion.

Q. Those eggs were for ships and for export, is that true? [3632]

A. They were for transports and for export.

Q. So the best quality of eggs were the type of eggs that the inspectors from Fort Mason were inspecting? A. Correct.

Q. Generally, were the substantial quantities of eggs inspected by the group of men that would include Colonel Hand, Colonel Kielsmeier and those men, the quality of eggs that they would buy were generally in that period Standards, was that correct? A. That is correct.

Q. Not entirely, however?

A. No. They made other inspections.

Q. Did the Army ever buy Trades or "C's"?

A. No, sir.

Q. There was some testimony here in this case in which your name was mentioned, testimony given by Mr. Pineda; I cannot give you the date, I cannot give you the order, because it is not here, but it related to a soldier, some incident where a soldier, an attendant, one accompanying a ranking officer, was in your premises and you told him to go out and move an automobile that was in the way of a truck and while he was out moving the automobile,

(Testimony of Ruby J. Goddard.)

or had left the premises, a quantity of eggs which had been tendered to an Army inspector were moved by you or under your direction and other eggs substituted in its place. Did any incident like that ever occur, an incident of that type?

A. No, sir.

Q. I think the incident was followed up by some testimony to the effect that the Army man who was on the floor of the [3633] premises of Nye & Nissen a short time thereafter and on this occasion you suggested the soldier go up and have a drink and while he was up having a drink, or after you invited him to have a drink, something was done to some eggs. Did an incident like that ever occur?

A. No, sir.

Q. During the period of time that Colonel Kielsmeier was coming into the plant of Nye & Nissen to inspect eggs—do you remember Colonel Kielsmeier? A. Yes.

Q. Did he have a method of marking cases of eggs which he selected from lots tendered to him for inspection?

A. Colonel Kielsmeier usually took his Veterinary Corps stamp and would put his stamp right on the case that he picked out to sample.

Q. Was that his usual method?

A. That was his usual method.

Q. Did he also have a brush?

A. He used this ink brush to ink the stamp so he could stamp cases. In other words, instead of having one of those ink pads with which to wet

(Testimony of Ruby J. Goddard.)

his stamp, he carried a brush, a self—like a fountain pen.

Q. Did you ever see him use that to designate a case?

A. He may have used that on cases.

Q. At any time after Colonel Kielsmeier either put a Veterinary Corps stamp, used that to mark it with the stamp to designate that that was the case he desired to inspect, or if he took the brush that was like a fountain pen, did you ever remove those cases and take some other cases and put a similar mark [3634] on them?

A. No, sir, absolutely not.

Q. Did you ever have a similar stamp?

A. No, sir.

Q. Did you ever simulate or counterfeit in any way or attempt to do so the markings that any of these Army men were putting on cases that they selected in your plant? A. No, sir.

Q. Did you ever see anyone do it in your presence? A. No.

Q. Or direct anyone to do it?

A. Absolutely not.

Q. In the selection of a case of eggs, regardless of who the Army inspector was, whether Lieutenant Hand, Colonel Kielsmeier, Colonel Foster, or anybody, did you ever see an employee of Nye & Nissen select a case of eggs for that Army inspector and give it to him or indicate it to him as a case of eggs that he ought to select as a sample?

(Testimony of Ruby J. Goddard.)

A. No. The Army would never take a case like that.

Q. Didn't you direct Mr. Pineda to pick out the samples for Colonel Kielsmeier?

A. Nobody could pick out samples for any Army inspector.

Q. I am asking you this, did you tell Mr. Pineda when Colonel Kielsmeier or Colonel—in deference to Mr. Pratt—Colonel Kielsmeier, or as Mr. Pineda said, Colonel Foster, didn't you tell Mr. Pineda: "When the Colonel comes in this morning see that he gets these cases of samples, pointing out these cases to him"?

A. No, that is impossible.

Q. You say it is impossible. Why?

A. Well, you heard Colonel Hand testify that they always drew their own samples. [3635]

Q. Did you ever see an Army man make his inspection by coming into that plant and letting anyone designate sample cases for him?

A. No, sir.

Q. That includes Colonel Hand sitting there?

A. Yes.

Q. There was some testimony that ran throughout this case relating to a Department of Agriculture stamp, a facsimile of which was introduced here, "U. S. Department of Agriculture Specials". I will ask if you have ever used a Department of Agriculture stamp which you possessed as distinguished from a stamp which was in the posses

(Testimony of Ruby J. Goddard.)

sion of a Department of Agriculture man and given to you for the purpose of using? A. No.

Q. Did you ever have possession, were you ever the custodian of or have possession of a Department of Agriculture stamp? A. No, sir.

Q. Testimony was given here, Mr. Goddard, relating to a stamp, and the statement was made that that stamp was kept by you over a period of years in your desk. Do you remember that testimony?

A. Yes.

Q. Did you have a desk? A. Yes.

Q. Was the desk in the Townsend Street plant of Nye & Nissen? A. Yes, sir.

Q. Who used the desk that you had there?

A. Everybody.

Q. When you say everybody who do you mean?

A. All—it was one of these high bookkeeping desks, it had [3636] three drawers, and in these three drawers we kept pencils, rubber stamps, ink, many things; we even kept candy in there, and the inspectors would come to my desk for a pencil, or if they wanted a bar of candy they would help themselves, of if they needed ink or an ink pad they would always come to my desk.

Q. Was your desk that desk, used commonly by the Department of Agriculture inspectors?

A. It was.

Q. And other Army inspectors and the employees of the plant of Nye & Nissen?

A. Yes. They all used my desk, and made telephone calls from it.

(Testimony of Ruby J. Goddard.)

Q. You mean it had a telephone on it?

A. Yes, it has two telephones on it.

Q. Who used the desk for telephoning purposes?

A. I would, the boys on the floor, the Army inspectors, Department of Agriculture inspectors, anybody who happened to be on the floor.

Q. Was it a general utility desk, is that what it was? A. Yes.

Q. But it was supposed to be yours, is that right? A. Supposed to be.

Q. At any time, Mr. Goddard, did you ever see Mr. Moncharsh using a Department of Agriculture stamp in the absence of a Department of Agriculture inspector and then when the inspector came into the building warn Mr. Moncharsh that "Here comes the Department of Agriculture inspector?"

A. No, sir.

Q. But you have heard the testimony to this effect from Mr. [3637] Andrade and Mr. Pineda. Did you ever see a Department of Agriculture stamp used at all, at any time, whether it had "Specials" on it or not, used that was in the possession of the firm of Nye & Nissen as distinguished from a Department of Agriculture stamp that had been given to someone to use by a Department of Agriculture inspector? A. No, sir.

Q. Now, have the Department of Agriculture stamps which they have possession of been used by employees of Nye & Nissen in the stamping of cases? A. Yes.

Q. Is that common or uncommon?

(Testimony of Ruby J. Goddard.)

A. It is very common.

Q. Was it common or uncommon in the years prior to moving to 17th and Missouri Street, down on Townsend Street?

A. It was very common.

Q. There has been some testimony here that you used to go up to the safe of Nye & Nissen and get a stamp. Did you ever go up to the safe in the office upstairs in the firm of Nye & Nissen and get a Department of Agriculture stamp out of that safe in your life? A. No.

Q. In the room, Mr. Goddard, upstairs, how many office employees were in the office room where the safe was kept?

A. There may have been six or eight.

Q. They were there every day?

A. They were there all the time.

Q. In respect to the butter, the subject of butter is involved in this case, in the years 1939, 1940, 1941 and 1942, there [3638] was a cutting plant used in the firm of Nye & Nissen on Townsend Street? A. Yes.

Q. Assuming, Mr. Goddard, that in the year 1939 that the firm of Nye & Nissen handled five million and more pounds of butter and in the year 1940 over four millions pounds of butter——

Mr. Pratt: Is that in evidence here?

Mr. Faulkner: No. I say assuming this, and I will produce the figures, if necessary.

Mr. Pratt: Very well.

Mr. Faulkner: Q. Assuming that in 1941 there

(Testimony of Ruby J. Goddard.)

was in excess of four million, seven hundred fifty thousand pounds of butter handled by the firm of Nye & Nissen, how was that butter handled in respect to the cutting of butter?

A. Well, it would be only a very slight proportion of that butter that was cut.

Q. The very substantial quantity, assuming that I have given them accurately, of butter that I have indicated to you, to whom was the butter in those substantial quantities sold?

A. During that period that butter would be sold in bulk to people like Golden State, Borden's Dairy Delivery, Challenge Creamery, Safeway Stores and other dealers.

Q. Did you sell butter in bulk to the Army?

A. Not at that time.

Q. What would your best judgment be of the quantity of butter that was cut in the plant of Nye & Nissen on Townsend Street? [3639]

A. Oh, I would say about five percent.

Q. Out of the five percent was the Army a substantial buyer of butter?

A. Oh, I would say, about half.

Q. In respect to the butter, Mr. Goddard, in the years that I have mentioned when you were down on Townsend Street did you give directions to people in respect to cutting butter?

A. Yes.

Q. Would you tell them when to cut butter?

A. Yes.

Q. And when the Army inspectors, like the

(Testimony of Ruby J. Goddard.)

Colonel there, and others came in, would you participate in the matter of getting butter out for those orders? A. Yes.

Q. There was some testimony here, Mr. Goddard, that on a particular occasion there was an Army order for some butter and that Colonel Hand, I think, came out to inspect the butter, and then there was some switching of butter and butter of a different quality was run through and there was a direction given to cut the butter, to Mr. Pineda, to cut the butter under weight. Do you remember the incident that Mr. Pineda testified to?

A. I don't remember the incident, but I remember his testimony.

Q. At the time of that incident, I think it was in 1942, regardless of the time, at all events, it was a time when Colonel Hand was there. I will ask you if at the time when Army orders were prepared for butter where the weights were determined in connection with the acceptance of the butter, [3640] rather, at what point inspection and weight was made for the purpose of determining the Army would accept the order?

A. At the port of delivery, point of delivery.

Q. Was that uniform? A. Yes.

Q. Do you know whether or not the Army would check the weights on delivery of butter and request the firm of Nye & Nissen for credit in relation to any differences in weights during that period?

A. That has happened.

Q. In respect to the actual cutting of butter for

(Testimony of Ruby J. Goddard.)

the Army, where Colonel Hand was the man who was making the inspection, would he be accompanied by any other person?

A. He usually would have some soldier with him.

Q. When a soldier was with him what service was performed by the Colonel and what service was performed by the soldier with him?

A. The Colonel sometimes would have the soldier try some of the butter to see if he concurred with his judgment on the scoring and he would help the Colonel put the churn numbers down and the quantities.

Q. Now, Mr. Goddard, you used an expression —may I have that answer read, your Honor?

The Court: Read the answer.

(Answer read.)

Mr. Faulkner: Q. How was butter designated when it came into your plant?

A. It would have churn numbers on it.

Q. Is this correct, to cover it quickly, Mr. Goddard, there [3641] would be a number of cases of butter, usually about sixty pounds, and the butter would come from a particular churn, there would be a designation on those cases that they came out of Churn No. 9, for instance, or whatever it was?

A. That's right.

Q. Is that correct? A. That is correct.

Q. Then there would be another churn of butter and there would be on the cases the churn number, is that correct? A. That's right.

(Testimony of Ruby J. Goddard.)

Q. The Colonel would test some butter from each churn, is that correct?

A. That is correct.

Q. Before it ever went to the butter room for cutting? A. That is right.

Q. Now, after the start of the cutting of butter in the butter room what would the Army attendant do, that is, the soldier or the non-commissioned officer?

A. Do you mean when we started to cut?

Q. Yes.

A. When we would start stripping that butter for cutting he would check the churn number and see that they agreed with the list he had, if the churn numbers agreed. Then we would cut that butter if they agreed.

Q. Then what would he do?

A. He would stay right in the butter room and watch the entire operation.

Q. When the operation, which I won't go through, of shoving the butter into the butter machine and which it progresses [3642] finally to where it was placed in a case, at what stage of that proceeding would the Army put a Veterinary Corps stamp on the case?

A. When the butter was in a package and sealed he would either stamp it on the roller or stamp it on the tray outside where they were stacking it.

Q. In the period of time that you were cutting butter for the Army in 1939, 1940, 1941 and 1942, have you any recollection of any incident when the

(Testimony of Ruby J. Goddard.)

U. S. Army ever returned to your firm butter because of the claim that it failed to measure up to quality? A. No, sir.

Q. There have been instances where the weight adjustments have been made, is that correct?

A. That is correct.

Q. But you have no recollection of any incident where the Army returned butter because it failed to meet the official requirement, is that right?

A. That is correct.

Q. For quality? A. That is correct.

Q. At the time of the outbreak of the war, Mr. Goddard, do you remember any occasion where you told Mr. Pineda or any employee of Nye & Nissen to go down on a truck to the waterfront and to hide in the truck? A. Absolutely not.

Q. How were men accredited to the waterfront in those times, according to your recollection?

A. Well, all the boys around the plant had gone down to the Ferry Building to get a permit to pass. When they first went down they got temporary passes, but after a period of time they went down and got [3643] permanent passes.

Q. Do you remember any employee that you have any recollection of who was delivering to the waterfront that did not have an accredited pass?

A. No, sir.

Q. Do you remember any instance where the failure of anyone to have a pass caused you to suggest that a man get in the truck and have an island built on the truck so he could get in the middle

(Testimony of Ruby J. Goddard.)

of it and then go with the truck to the pier where the armed guards were and he could get out of that truck where the island was and get off and help with the unloading? A. No. [3643-a]

Q. If you built an island in a truckload of eggs, for instance, and built them that way, what would happen to the cases when they went on a truck?

A. Unless you used some bracing inside they would fall all over the truck.

Q. Did you ever direct Mr. Pineda to go down to the waterfront and deliver a message to a driver and tell him to be sure and stack eggs in a certain manner on the waterfront? Did you ever give that direction to Mr. Pineda? A. No, sir.

Q. There was some testimony given by Mr. Andrade relating to a supposed delivery of 749 cases of eggs at Ft. Mason. Did you have occasion to deliver eggs to Ft. Mason?

A. We may have delivered some to the Transport Dock there.

Q. I mean, is Ft. Mason a transport dock?

A. Yes, sir.

Q. And you were supplying those transport docks, is that correct? A. Yes, sir.

Q. In the years up to 1940 and 1941 were transport dock orders orders in which the inspection was on the dock? A. Yes, sir.

Q. Was that the only inspection?

A. Yes, sir. If it was a transport order that would be the only inspection. If it was for an export order—they used to load out export orders

(Testimony of Ruby J. Goddard.)

on a Ft. Mason dock—there would have been two inspections, at the point of origin and at the point of delivery.

Q. You would always have at least one inspection at Ft. Mason, and that would be the inspection at that dock, and certain type orders there would have been a prior inspection at the point of [3644] origin, is that right? A. That is right.

Q. Did you tell Mr. Andrade at any time with respect to delivery of a quantity of eggs at Ft. Mason to put the eggs on the dock in any certain manner? A. No, sir.

Q. Did you ever give Mr. Andrade any directions of any kind how to deliver eggs at an Army dock? A. No, sir.

Q. Do you remember any incident, Mr. Goddard, when an order in 500-case lots or more for ultimate delivery to the United States Navy ever being inspected in your plant in 1939 or 1940, in which a Department of Agriculture inspector came in and inspected that lot of eggs, 30 cases at a time?

A. No, sir.

Q. By 30 cases at a time, I mean 30 in the morning and then 30 in the afternoon, 30 the next morning, 30 in the next afternoon?

A. No, sir.

Q. Do you ever remember in 1939 and 1940 any inspection of eggs in the plant of Nye & Nissen on Townsend Street when quantities of 500 cases or more were to be delivered to a supply ship?

A. Inspected 30 at a time?

(Testimony of Ruby J. Goddard.)

Q. Do you remember any incident when the Department of Agriculture ever inspected a thousand-case order of eggs in the plant of Nye & Nissen on Townsend Street for delivery to the Navy?

A. No, sir.

Q. Or 500 cases? A. No, sir.

Q. Do you remember any incident where there was a quantity of a thousand cases of eggs assembled, whether they were for the [3645] Navy or not, assembled on the floor of the plant at 324 Townsend Street, all of which bore the Department of Agriculture stamp of inspection, and that you took, and that under your direction that entire thousand cases of eggs were removed, placed in an icebox, the stamps removed, and another set of a thousand cases of eggs were taken in place of that thousand cases of eggs and another stamp placed on them?

A. Absolutely not.

Q. Do you know of any incident where portions of a thousand-case lot of eggs had the stamps removed and then ultimately a thousand cases of different eggs were built up into a lot for delivery to any purchaser? A. No, sir.

Q. And stamped with a stamp which had been kept in the possession of Nye & Nissen for a period of some three or four years?

A. No, sir.

Q. Or any other stamp which belonged to Nye & Nissen, as distinguished from the Army inspector? A. No, sir.

Q. There was an incident testified to, Mr. God-

(Testimony of Ruby J. Goddard.)

dard, relating to the delivery of some eggs to a post exchange sometime back in 1940 or 1941. Did the firm of Nye & Nissen sell eggs to the post exchange?

A. We never sold any eggs to the post exchange.

Q. What is the post exchange at the Presidio?

A. I don't know what they are. Maybe a private company that sells merchandise to enlisted men there.

Q. Mr. Andrade said that he took out thirty cases of eggs [3646] to the post exchange and they were turned down, and then Colonel Dean phoned you and he talked to you and you said, "Go around the block and go back at a certain time when a man would be getting hungry because he was going to get his lunch pretty quick. Give him the eggs and he would try and pass them." Did you ever have an incident like that?

A. No, sir, we never sold eggs to the post exchange.

Q. Did you ever have an incident like this, whether it was to the post exchange or to anyone else?

A. No, sir.

Q. Were you aware of the lunch hours of the enlisted personnel at the Presidio in the years 1939 and 1940?

A. No, sir.

Q. How many times have you been out to the Presidio in those years?

A. I may have drove through there a few times.

Q. Did you ever go out there on business?

(Testimony of Ruby J. Goddard.)

A. No, sir.

Q. Mr. Ransom testified that at sometime during the year 1944 you gave him a direction to take some eggs that you had hand-trucked to his truck and mix them up in his truck. Do you remember the testimony? A. Yes, sir.

Q. Did you ever give him that direction?

A. No, sir.

Q. Was he a driver at the firm of Nye & Nissen?

A. He helped out as a driver.

Q. Was he your driver? A. Yes, sir.

Q. And did he make deliveries for you?

A. Occasionally.

Mr. Pratt: Pardon me, Mr. Faulkner: I did not get his name.

Mr. Faulkner: I think his name is Ransom.

Q. In other words, he made deliveries for you, is that correct? A. Yes, sir.

Q. Mr. Pineda testified in this case that in January, 1940 an incident occurred at the Merchants Ice & Cold Storage Company in which Mr. Jack Smith participated, and that in January, 1940 you and Mr. Pineda and Jimmy Nix and Mr. Berman and Mr. Smith went over to the Merchants Ice & Cold Storage Company and that a large quantity of eggs which were in that plant were broken into and the eggs stripped down and examined. Do you remember that incident?

A. Yes, sir.

Q. And the persons involved, according to the

(Testimony of Ruby J. Goddard.)

testimony in this case, Mr. Goddard, I direct your attention to those were Mr. Belnap, Mr. Nix, Mrs. Smith, a man named Birtcher, and yourself, and Mr. Pineda. Do you remember any incident of that kind with those persons present, or with any part of them present, relating to breaking down a quantity of eggs in the Merchants Ice & Cold Storage Company in January, 1940?

A. No, sir.

Q. Was there ever an incident in which you participated, and Mr. Smith participated, and Mr. Pineda participated, and perhaps another man, relating down to breaking down a quantity of eggs in the Merchants Ice & Cold Storage Company?

A. Yes, sir.

Q. How many years after January, 1940, the time fixed by Mr. Pineda, did that incident occur?

A. Oh, about two and a half years. [3648]

Q. When did it occur? A. August, 1942.

Q. Was a transaction where you personally went over to the Merchants Ice & Cold Storage Company? A. Yes, sir.

Q. Will you state to the court and jury the facts relating to that transaction as you remember them?

A. Well, it was on a Saturday afternoon. It may have been around 12:30. I was getting ready to go home, and I think the only other boy there with me was Henry Pineda, and he was getting ready to go home. Mr. Smith came over to the balcony and called down to me and said, "Ruby, don't go away. I may have some work for you to

(Testimony of Ruby J. Goddard.)

do. If any body else is in the plant tell them to stay there." That is all he said to me. I told Henry Pineda to hang around. We may have some work to do.

About a half hour later Mr. Smith called down and said for me to wait, and if I could get another man, we would need another man. Jut then Joe Barfeldt happened to drive in from one of the city deliveries, and we asked him if he would work. He said he would. Up to that time we had no idea what we were going to do. We knew we were going down to the Merchants Ice & Cold Storage.

I think it must have been 1:30 or a quarter to two Mr. Smith told us we were going down to the Merchants Ice & Cold Storage Company. Henry Pineda and myself went down with Mr. Smith in the car, and Joe Barfeldt drove down in his own car. When we got down to the Merchants Ice & Cold Storage Company [3649] we were met on the platform by some Army officers. I think one was Major Bentham, and the other was Lieutenant Joneschild. Jack Smith had some conversation with them and then we all went up in the elevator to one of the storage rooms upstairs. When we got upstairs they asked us to go into one of the rooms with them. And then Major Bentham and Lieutenant Joeschild asked Jack Smith whether we could help the soldiers in moving some eggs cases around. That is all we knew up to then.

We went inside the room. There were four officers, and we fixed a bench—oh, there was lots of

(Testimony of Ruby J. Goddard.)

cases stored in this room, and they called our attention to one particular lot. I think there was about 800 cases of eggs in this lot. We fixed a bench about three cases high upon which they could place a case of eggs and examine said case of eggs. These eggs in the icehouse I think are stacked about eleven or twelve cases high. I had Henry Pineda and Joe Barfeldt start breaking these cases of eggs down. They made some sort of little opening to start breaking the first case down from the pile, and they started passing them down to these officers. These officers would take this case of eggs, put it on the bench, open the case of eggs completely around. They were looking for wire marks on each end of the case. In other words, they had eight ends to look at, and I think we spent about three hours there that afternoon breaking one pile down and repiling the eggs after we looked at them. [3650]

Q. In the course of that operation, Mr. Goddard, was there an actual bench build right in the room where the eggs were?

A. Right alongside the pile.

Q. And is that the place where the officers or the soldiers examined the cases of eggs?

A. Right at that bench.

Q. When you say that these eggs were eleven or twelve cases high, that means practically up to the ceiling in that particular plant, does it not?

A. Yes, sir.

Q. How did you get those cases up on the top?

(Testimony of Ruby J. Goddard.)

How would you break into that quantity of eggs to bring them down from that height?

A. We would break the top four or five cases so that somebody would have a place to stand, and then he would tear into the pile.

Q. He would be way up——.

A. He would be way up in the air.

Q. And you participated in that, is that correct? A. Yes, sir.

Q. Did you give any directions to Mr. Pineda to take and rub his shoes on either 8, or 4, or 2, or 1 or any wiremarks on the cases?

A. No, sir.

Q. So the dirt on his shoes would eliminate any markings that may have been made by a wire?

A. No, sir.

Q. When the cases were handed down to these officers and were examined, what is your best recollection of the number of cases that were set aside by the Army officers in one pile, and how many were in the other pile for restacking?

A. I think they set aside, oh, around fifty or sixty cases. [3651]

Q. How many cases do you think you broke down? A. Oh, around 800.

Q. And you were there for that period of time, is that correct?

A. We didn't get out of there until after five.

Q. Before you ever left the plant of Nye & Nisson, Mr. Goddard, did you tell Mr. Pineda that

(Testimony of Ruby J. Goddard.)

you had been caught red-handed in connection with some cases with the Army? A. No, sir.

Q. When you went down there with Mr. Smith had anyone told you or did you know anything about the transaction that you were going down to work on? A. No, sir.

Q. When was the first time that you found out what the Army wanted?

A. From the officers on the platform at the Merchants Ice & Cold Storage.

Q. Did they at that time explain to you that they wanted to examine those cases with the end in view to examining the wire markings?

A. Yes, sir.

Q. Had those cases of eggs which were in that plant come from your plant on Townsend Street?

A. No, sir.

Q. There were other conversations in which you did not participate, isn't that correct, between Mr. Smith and Lieutenant Joneschild?

A. Joneschild.

Q. What was the colonel's name?

A. Bentham. He was a Major Bentham at that time.

Q. Do you remember any occurrence in relation to that incident in which you heard Mr. Smith asking anybody to try to remove [3652] those eggs without the storage company records showing they had ever been there or any conversation like that? Do you know anything about that?

A. No, sir.

(Testimony of Ruby J. Goddard.)

Q. You have identified that as a transaction in August, 1942. Was there ever a similar transaction of that kind, similar in any respect, that occurred in January, 1940? A. No, sir.

Q. Mr. Goddard, in the year 1944, in connection with the operations of the firm of Nye & Nissen, were you making sales and deliveries of butter, eggs and cheese to certain ships on the waterfront?

A. Yes, sir.

Q. What companies did you handle?

A. The American President Lines, Matson Navigation, Weyerhaeuser Steamship Company, and Moore-McCormack Company.

Q. In connection with the work of supplying those ships in that period, do you recall, Mr. Goddard, whether the more substantial quantity of eggs, butter and cheese combined were being supplied to the ships you have mentioned—was that quantity greater or less than the amount that was being handled by City Sales?

A. I think it was greater.

Q. In that period of time, April and May of 1944, you did not have, under you control as part of your operation any City Sales work, at all, isn't that correct? A. No, sir.

Q. In connection with the filling of orders on the waterfront in the months of April and May of 1944, how many drivers did you have?

A. I had one steady driver working out of San Francisco [3653] There was a driver working out of Petaluma that would help out, and occasionally

(Testimony of Ruby J. Goddard.)

I would hire an extra man or use any man I happened to have on the floor, if I happened to need one.

Q. And did you ever use a man named Nystrom as a driver to deliver to ships which you were handling the account for? A. I may have.

Q. It appears, Mr. Goddard, that in the period from April 24th to May 13th—there are three ships which there has been some criticism directed to the delivery—Mr. Nystrom has testified that he made two of those deliveries. Do you know whether he did, or not? A. He may have.

Q. All of the other deliveries, or, rather, the great bulk of your deliveries were made by a particular driver, is that right?

A. By my driver.

Q. What is his name?

A. Mr. Charles Eby.

Q. The first of these deliveries, Mr. Goddard, relates to a ship called the Phillipa. I will call your attention to that hand tag and ask you if that is in your handwriting.

By the way, Mr. Pratt, that is the hand tag that Mr. Magee was inquiring about. There was some question whether the hand tag for the Phillipa was missing.

Mr. Pratt: What is the exhibit number?

Mr. Faulkner: Q. Will you look on the back of that, Mr. Goddard? A. 77. [3654]

Q. Mr. Goddard, I will show you the counterpart from the file of Nye & Nissen to that Exhibit

(Testimony of Ruby J. Goddard.)

77, CP for Identification, and ask you to look at both of them. A. They are both the same.

Q. I will use this one, Mr. Goddard. That tag is in your handwriting? A. Yes, sir.

Q. Do you have an independent recollection of that particular order? A. No, sir.

Q. How many ships were you shipping to during the period, we will say, from the 24th of April to the 15th of May?

A. It would be a great number of ships.

Q. More than 50? A. Oh, absolutely.

Q. At all events, you recognize that as your tag, is that right? A. Yes, sir.

Q. Mr. Goddard, you will observe that that tag calls for eggs, cheese—is that last word butter?

A. 12 boxes of butter.

Q. And there are three items of cheese?

A. Three items of cheese. That is right.

Q. It says, "65 cases, Medium AA."

A. Processed—"Proc."

Q. Will you describe to the court at the time in May, May 3, 1941, about that time, when you would have an order like that, how you would have it filled?

A. I would point out a row of eggs to the driver and tell him to take 65 cases of eggs and put them on a truck. I would point out the cheese to the driver and tell him to take certain cheese. I usually had the butter sitting right at the end of the platform, right near the trucks. [3655] I would tell him how many boxes of butter to take.

(Testimony of Ruby J. Goddard.)

Q. When you would fill the invoice out for instance, you have two cases, California Loaf cheese, 56 pounds; 2 cases of Romano Dolce Cheese, 100 pounds; and then there is a small item of some grated cheese 20 pounds. With respect to the boxed cheese, two cases 56 pounds, and the two cases of the Romano Dolce, 100 pounds, who would determine the weights to to put on the invoice? How would you in your operation determine the weights, Mr. Goddard?

A. Usually I would do that, myself.

Q. And where would you get the weights?

A. Right off the boxes, trays.

Q. Did the boxes that were on the floor of Nye & Nissen of cheese have weights on?

A. Yes, sir.

Q. And you would look at the weights, yourself? A. Yes, sir.

Q. And fix the weigths in that fashion?

A. That is right.

Q. Mr. Goddard, in respect to this particular shipment did you remove any marking of weight off of the cases that went to that shipment, or any shipment on the waterfront?

A. The only marks I would ever remove would be some old dirty marks if they happened to be on the cases, if there was more than one weight on a case.

Q. With respect to the movement of butter, eggs and cheese, when a case left your plant which you had seen and handled, did you ever see a case of

(Testimony of Ruby J. Goddard.)

cheese leave that did not have a weight [3656] mark somewhere on that case? A. No, sir.

Q. When eggs, cheese and merchandise of that type were sent to the waterfront, in the ordinary course of business, was it your understanding that they were checked over by the ship's stewards?

A. Yes, sir.

Q. And weighed? A. Yes, sir.

Q. I mean in the lines that you have——

Mr. Knuth: I object to that, if the Court please.

Mr. Pauillac: Q. I will put it this way: How many years have you been supplying American President Lines or its predecessor, the American Dollar Lines, the Matson and those—was Moore-McCormack one of them? A. Yes, sir.

Q. How long have you been supplying those ships?

A. Ever since I have been with Nye & Nissen. That is about twelve or thirteen years.

Q. In the course of your business in supplying those ships over that period of time, has it been your understanding that it was the duty of the ship's steward to inspect and weigh all merchandise received by the ship?

Mr. Pratt: I object to that.

The Witness: That was the impression I always had.

The Court: The objection is sustained.

Mr. Pratt: I will ask that the answer be stricken.

The Court: It may go out.

(Testimony of Ruby J. Goddard.)

Mr. Faulkner: Q. In the regular course of business in supplying ships are you familiar with the supplying of ships over the period of ten, twelve, or fourteen years? A. Yes, sir.

Q. Are you familiar with the practices of receivers of merchandise on the waterfront during that period of time? A. Yes, sir.

Q. Do you know what the practice was with respect to the inspection and weighing of merchandise received?

Mr. Pratt: I would like to cross-examine on his qualifications.

The Court: Proceed.

Mr. Pratt: Q. How many times have you been down to the ship? A. Oh, a few times.

Q. Have you been there when your merchandise was delivered? A. No, sir.

Q. Have you seen packages of cheese or butter weighed by the steward of any boat?

A. I have had telephone conversations with some of the men who did the weighing, who would call me up about the deliveries.

Q. Have you ever seen the weighing actually done at any time at the ship or at the pier of cheese or butter coming from your plant?

A. No, sir.

Mr. Pratt: If your Honor please, I object to his testimony.

The Court: The objection is sustained.

Mr. Faulkner: I submit, your Honor, it is over a period of ten or twelve——